

NOT FOR PUBLICATION- FOR UPLOAD

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES,

Plaintiff,

v.

GOVERNMENT OF THE VIRGIN ISLANDS,

Defendant.

Civil No. 1984-104

MEMORANDUM

The Court conducted hearings in this matter on Tuesday, April 25, 2000, and Wednesday, April 26, 2000, in St. Croix. During the course of these hearings, the Court inspected the following sites: the LBJ Pump Station ["LBJ"], the Figtree Pump Station ["Figtree"], the Waste Water Treatment Plant ["WWTP"], and the Bethlehem Interceptor.<sup>1</sup> As of this date, the status of these sites is as follows:

1. LBJ is not operational. Since February, 2000, while repairs to LBJ are ongoing, the Department of Public Works ["DPW"] has hired a contractor, GEC, Inc. ["GEC"] to operate a temporary pump to shunt the sewage flow around LBJ through the sewer lines to Figtree. GEC and

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<sup>1</sup> The Court also viewed the gut located on the east side of the Hovenssa Refinery property. The Department of Public Works is currently bypassing the Figtree Pump Station, which causes the sewage that should be processed through Figtree to overflow into this gut and directly into the sea. A "bypass" occurs when sewage flow which should go through the piping of a pump station on its way to the WWTP is instead diverted directly into the sea.

DPW agree that this pump has eliminated all bypasses into the sea, except for about an hour a day or when rain causes the effluent flow to exceed the capacity of the temporary pump.<sup>2</sup>

2. Figtree is not operational. DPW is bypassing into the sea the sewage that should be pumped through Figtree to the WWTP.
3. WWTP is virtually out of operation and incapable of performing its design function as a primary treatment plant, which is to remove the solids from the sewage before it is discharged into the sea.
4. The Bethlehem Interceptor is a large sewage pipe which has been broken and dumping raw sewage into the sea near the airport since approximately November, 1999. GEC has been hired by DPW and is making the necessary repairs. The sewage handled by this interceptor pipe is flowing into a nearby gut and eventually discharges into the sea.

The Government of the Virgin Islands ["Government"] is not in compliance with several aspects of this Court's orders of

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<sup>2</sup> For example, over a period of nine days, GEC had to bypass sewage into the sea on seven of those days for approximately one hour each day.

February 12, 2000, and March 13, 2000.<sup>3</sup> The Government offered several reasons for the delay, including financial difficulties, discovery of additional problems at each site, and the necessity of following procurement regulations despite the recent declaration of a state of emergency of the waste water treatment system in the Virgin Islands. As the Court noted at the hearing, the Court is aware of the financial constraints facing the Government at this time, as well as the fact that the current administration, including the Commissioner of DPW, Harold G. Thompson, Jr., have inherited an enormous problem that was not of their own making. Although the Court does not question Commissioner Thompson's dedication to solving the serious danger these bypasses pose to the health of the citizens of and visitors to the Virgin Islands, the repeated failure of the Government to comply with orders of this Court will no longer be tolerated as hundreds of thousands of gallons of raw sewage are illegally discharged daily into the Caribbean Sea.

A quick fix or band-aid on the gaping wound that is St. Croix's waste water treatment system is not in the best interests of our community, however. Commissioner Thompson and DPW staff will consult with the Governor and his financial decision makers,

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<sup>3</sup> These orders and supporting memoranda may be found at the District Court's web site. (See <http://www.vid.uscourts.gov>)

with the Virgin Islands Department of Planning and Natural Resources, and with the United States Environmental Protection Agency, as well as their respective counsel, and, together with the Court, will come up with a definitive plan which imposes firm deadlines. The result will remedy long-standing systemic flaws and repair or construct a waste water treatment system for St. Croix that will operate for years, if properly maintained, will minimize the risk of future bypasses, absent natural disaster, and will bring the Government well along the path to compliance with the Clean Water Act and the Amended Consent Decree entered by this Court on January 19, 1996.

To this end, the Court has put together a proposed plan and deadlines in a draft order from the information gathered during the tour of facilities and relatively informal exchange of data earlier this week. (See attached Appendix.) The parties shall review this draft order and the deadlines contained therein. After their review of the draft order, the Government and the United States shall each shall file a brief explicitly agreeing to or disagreeing with each proposed step of the plan and its suggested deadlines for completion. If a party disagrees with a deadline, that party shall explain to the Court in great detail why the deadline is not feasible and offer an alternative deadline with which it can comply. After receipt of the parties'

briefs, the Court shall make any necessary changes to the deadlines and promptly issue a final "deadline order."

The Court cannot emphasize enough the importance of this review process. The deadlines the Court will set after receiving the parties' input shall be strictly enforced. Failure by the Government to comply with these deadlines will result in contempt hearings before this Court, with incarceration as a possible penalty for the appropriate officials whose actions or lack of action are found to have impeded the progress of these crucial repairs. The Court will grant extensions of these deadlines only upon a written motion, submitted well in advance of the deadline, which demonstrates extraordinary circumstances that could not be foreseen at this time, or during the review of the proposed draft order by the Commissioner, his staff, the Governor and his financial and administrative assistants.

There are some deadlines and other requirements which will be ordered at this time. This order addresses repairs and other issues which the parties had agreed to without difficulty by the end of the April 26<sup>th</sup> hearing. If the Government experiences any problems in complying with these deadlines, it shall file a motion requesting an extension of time and setting forth in detail the reason for the delay. Again, failure of the Government to comply with this order without obtaining an

extension of time will result in contempt hearings before this Court, with possible penalties ranging from fines to incarceration.

The Court has reluctantly come to this position after concluding that there is no other alternative. This case has been pending for sixteen years with little or no change in the overall condition of the waste water treatment system, at least on St. Croix. The Court has simply had enough. The fouling of the Virgin Islands' beautiful waters from the continual discharge of raw sewage must simply stop and those responsible for any delay must and will be held accountable.

The draft order which the parties shall review is attached as the appendix to this memorandum. An appropriate order follows.

**ENTERED this 28<sup>th</sup> day of April, 2000.**

**FOR THE COURT:**

\_\_\_\_\_/S/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

**ATTEST:**  
**ORINN ARNOLD**  
**Clerk of the Court**

**By:** \_\_\_\_\_  
**Deputy Clerk**

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
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UNITED STATES,

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For the reasons set forth in the accompanying memorandum of  
even date, it is hereby

1. Paragraph 5(a) of the Court's Order dated February 12, 2000, is **MODIFIED** as follows:

2. Paragraph 5(b) of the Court's February 12, 2000, is  
**MODIFIED** to include the Virgin Islands Water and Power

Authority as an additional party which must be notified of any bypass occurring within the waste water treatment system. The Court, in an effort to clarify paragraph 5(b), advises the Government of the Virgin Islands ["Government"] that it must notify the required parties of any bypass of any duration, except for the intermittent bypasses occurring at the LBJ Pump Station.

3. The Government shall include in the weekly reports mandated by Paragraph 5(a) of the February 12<sup>th</sup> Order, notices of the intermittent bypasses occurring at the LBJ Pump Station. This notice shall include an estimate of the duration of the bypass and amount of sewage discharged via the bypass.
4. The Government shall provide to the required parties no later than May 4, 2000, notices of the bypasses that occurred at the Williams Delight station.
5. The United States and the Government shall continue negotiations concerning the amounts of the fines owed by the Government for 1997. If the parties are unable to resolve their differences by June 16, 2000, the United States shall file a brief explaining what it believes the fines should be and how they should be



paid. The United States shall file its brief no later than June 16, 2000. The Government shall submit a response to the United States' brief no later than June 30, 2000.

6. **Bethlehem Interceptor:** Bypass of the raw sewage at the Bethlehem Interceptor shall cease no later than June 1, 2000.
7. **Waste Water Treatment Plant:** The Government shall identify a source of funding and provide notice to the Court and the United States of this source by May 31, 2000, for the independent contractor who must be hired to manage the treatment plant. The Court will set additional deadlines, after input from the parties, once the funding source is identified.
8. **Figtree Pump Station:**
  - a. The Government shall have Pump Number 3 operational no later than May 5, 2000.
  - b. The bypass at the Figtree Pump Station shall cease no later than May 8, 2000.
  - c. The Government shall perform routine maintenance on the valves at the Figtree Pump Station. The Government also shall conduct a visual inspection of the valves to determine if any need replacing

or repairing. The Government shall report the results of its maintenance and inspection efforts to the Court no later than May 8, 2000.

9. **LBJ Pump Station:** The Government shall submit a report on a feasible alternative to the 4" temporary pump no later than May 8, 2000. The temporary pump must be able to eliminate the need to bypass after heavy rains and daily high flows.
10. No later than May 12, 2000, the parties shall file briefs explicitly agreeing or disagreeing with each proposed deadline in the Court's draft order. (See Appendix.) If a party disagrees with a deadline, that party shall explain to the Court in full detail why the deadline is not feasible and offer an alternative deadline which that party can satisfy.
11. No later than May 12, 2000, the Government shall clarify the problem with the generator at the Figtree Pump Station. The Government's report may be included with the Government's response to the Court's draft order.
12. The Government shall advise the Court no later than May 12, 2000, of the status of its efforts to comply with Paragraph 7(d) of the Court's Order of February 12,

2000, addressing the Corrective Action Trust Fund.

13. If a party is unable to comply with any part of this Order, the party shall file a motion for extension of time justifying in great detail why it cannot comply with the Court's order. The party shall make every effort to file the motion *before* the subject deadline.

**ENTERED this 28<sup>th</sup> day of April, 2000.**

**FOR THE COURT:**

\_\_\_\_\_/s/\_\_\_\_\_  
**Thomas K. Moore**  
**District Judge**

**ATTEST:**  
**ORINN ARNOLD**  
**Clerk of the Court**

**By:** \_\_\_\_\_  
**Deputy Clerk**

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Order Book

(1) Cables on both the north and south clarifiers shall be adjusted and aligned by June 2, 2000 (2 weeks from date of Court's Deadline Order).

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(2) North clarifier shall be in full operation by June 2, 2000 (2 weeks after date of Court's Deadline Order).

(3) South clarifier shall be cleaned and in full operation by June 16, 2000 (4 weeks from date of Court's Deadline Order).

c. Grit Channels:

(1) Order new chains and scrapers by May 26<sup>th</sup> (1 week from date of Court's Deadline Order).

(2) Grit chambers shall be fixed one week after receipt of new chains and scrapers.

d. Generator:

(1) Order parts necessary for repair by May 26<sup>th</sup> (1 week from date of Court's Deadline Order).

(2) Generator shall be repaired and in full operation one week after receipt of parts.

2. **Figtree Pump Station**

a. Pump Number 1 shall be in full operation by June 16, 2000 (4 weeks from date of Court's Deadline Order).

b. Pump Number 2 shall be in full operation by June 30, 2000.

- c. Two additional isolation valves shall be ordered and installed in the intake manifold by June 30, 2000.
- d. The sump pump shall be installed and operational by June 30, 2000.
- e. The generator shall be in full operation by June 30, 2000.
- f. The Figtree Pump Station shall be fully operational by June 30, 2000.

**3. LBJ Pump Station:**

The following shall be completed by June 30, 2000:

- a. Two additional isolation valves shall be ordered and installed in the intake manifold.
- b. The eleven new valves already ordered and delivered shall be installed.
- c. The rehabilitation of the wet well shall be completed. This will include the installation and repairs to the wet well ventilation system, walkways, handrails, lighting system, and other appropriate safety measures.
- d. The rehabilitation of the dry well shall be completed. This will include the installation and repairs to the dry well ventilation and lighting systems.
- e. The three pumps shall be fully operational.



- f. The discharge line pipe shall be repaired on the  
discharge side from the riser pipe to the wall.

Additionally,

- g. The generator shall be operational by July 30, 2000.